

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

----- In the Matter of -----

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to
Investigate the Implementation
of Feed-In Tariffs.

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) DOCKET NO. 2008-0273
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PUBLIC UTILITIES
COMMISSION

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MAUI LAND & PINEAPPLE COMPANY, INC.'S MOTION TO INTERVENE

DECLARATION OF ROBERT I. WEBBER

and

CERTIFICATE OF SERVICE

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OF THE STATE OF HAWAII**

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MAUI LAND & PINEAPPLE COMPANY, INC.'S MOTION TO INTERVENE

MAUI LAND & PINEAPPLE COMPANY, INC. ("MLP") hereby moves the Honorable Public Utilities Commission of the State of Hawaii (the "Commission") for permission to intervene and become a party in the above-captioned matter ("Motion").¹ This Motion is made pursuant to the Order Initiating Investigation, and Hawaii Administrative Rules ("HAR") §§ 6-61-41, 6-61-55, and 6-61-57(3), and is supported by the Declaration of Robert Webber attached hereto and incorporated herein by reference. Pursuant to HAR § 6-61-41(a), MLP does not request a hearing on this Motion.

As demonstrated below, MLP satisfies all of the Commission's prerequisites for intervention as set forth in HAR § 6-61-55. In support of its Motion, MLP states:

¹ By Order Initiating Investigation, filed on October 24, 2008, the Commission initiated the instant proceeding to investigate implementation of feed-in tariffs ("Order Initiating Investigation"). Pursuant to the Order Initiating Investigation, any person seeking to intervene or participate without intervention in this proceeding shall file a motion with the Commission within twenty (20) days of the date of the Order Initiating Investigation. The Commission Certificate of Service indicates that the Commission served said Order by mail on October 24, 2008. Thus, in light of this service date, MLP asserts that its Motion is timely filed, pursuant to HAR §§ 6-61-21, 6-61-22, 6-61-41 and 6-61-57 as the deadline for filing such a motion is Monday, November 17, 2008. See In re Wailuku Water Distribution Company, LLC and Wailuku Water Company, LLC, Docket No. 2008-0025, Order (October 28, 2008).

1. Correspondence and communications.

Correspondence and communications regarding this proceeding should be addressed to:

Clifford Smith
Maui Land & Pineapple Company, Inc.
P. O. Box 187
Kahului, Hawaii 96733-6687

2. The nature of MLP's right to participate in the proceeding.²

The Order Initiating Investigation states that the Commission initiated the instant proceeding to examine the implementation of feed-in tariffs in the service territories of Hawaiian Electric Company, Inc. ("HECO"), Maui Electric Company, Limited ("MECO"), and Hawaii Electric Light Company, Inc. ("HELCO") (collectively, the "HECO Companies" or "Hawaiian Electric Companies").³ The Order Initiating Investigation references a comprehensive agreement⁴ with certain stakeholders designed to move the State away from its dependence on imported fossil fuels for electricity and ground transportation, and toward "indigenously produced renewable energy and an ethic of energy efficiency."⁵ It further states, in relevant part:

In their [Energy] Agreement, the HECO Companies and the Consumer Advocate request that, by March 2009, the commission:

conclude an investigative proceeding to determine the best design for feed-in tariffs that support the Hawaii Clean Energy Initiative, considering such factors as categories of

² See HAR § 6-61-55(b)(1).

³ Order Initiating Investigation at 1.

⁴ Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies, dated October 20, 2008 ("Energy Agreement").

⁵ Order Initiating Investigation at 1-2.

renewables, sizes or locational limits for projects qualifying for the feed-in tariff, how to manage and identify project development milestones relative to the queue of projects wishing to take the feed-in tariff terms, what annual limits should apply to the amount of renewables allowed to take the feed-in tariff terms, what factors to incorporate into the prices set for feed-in tariff payments, and the terms, conditions, and duration of the feed-in tariff that shall be offered to all qualifying renewable projects, and the continuing role of the Competitive Bidding Framework.⁶

MLP is a publicly traded company that owns and operates Maui Pineapple Company and the Kapalua Resort. It has over 25,000 acres of land holdings throughout the island of Maui, and such properties are situated in the service territory of MECO. MLP is committed to reducing Hawaii's energy costs, greenhouse gas emissions, and dependence on imported fossil fuels through the planned development of a significant integrated renewable energy park to be situated on MLP's properties that are within MECO's service territory. MLP expects the renewable energy park to be of significant size, approximately 100 megawatts ("MW"), at full build-out. The nature of the renewable energy park output will be a mix of intermittent (i.e., as-available) and firm capacity renewable power or energy. This renewable energy project is planned to consist of a mix of renewable power technologies and sizes including, without limitation, approximately 30 MW of wind turbine systems, 45 MW of photovoltaic systems, and 25 MW of pumped storage systems.

The renewable energy park intends to sell the renewable energy generated directly to MECO. To the extent the feed-in tariff developed through this proceeding will establish the terms and conditions and rates at which MECO will purchase renewable energy from MLP and/or its affiliates, this proceeding could

⁶ Order Initiating Investigation at 3 (footnote omitted).

significantly impact MLP and/or its affiliates, the financial and operational viability of its present and future renewable energy projects, the value of the company's shareholders' investment to date in MLP, and the ability of MLP to attract the capital and technological investments that will be needed to successfully execute its renewable energy projects in Hawaii, particularly on the island of Maui.

3. The nature and extent of MLP's property, financial, and other interest in the pending matter.⁷

As stated above, MLP is moving forward with activities and plans to develop its renewable energy projects in Hawaii, and has invested significant resources (e.g., property) and finances towards the study and development of the renewable energy park. The feed-in tariff developed through this proceeding could significantly impact the financial and operational viability of MLP's renewable energy projects and its ability to attract the necessary capital and technological investments in the same. In addition, the Order Initiating Investigation states that the parties to the Energy Agreement agreed that the "feed-in tariffs should be designed to cover the renewable energy producer's costs of energy production plus some reasonable profit."⁸ There is, thus, a potential for this proceeding to significantly impact the cost-effectiveness of MLP's and/or its affiliates' renewable energy projects, which, in turn, may affect MLP's and/or its affiliates' ability to ensure ongoing and continued investment in its projects.

⁷ See HAR § 6-61-55(b)(2).

⁸ Order Initiating Investigation at 3.

4. The effect of the order as to MLP's interest.⁹

As stated above, depending on the outcome of the instant proceeding, MLP contends that its interests (financial and otherwise), noted above, may be significantly affected by the Commission's decision in this proceeding.

5. The other means available whereby MLP's interest may be protected.¹⁰

MLP asserts that there are no other means available whereby its interests in this proceeding may be sufficiently protected, and that the extent of its interests will not, as noted below, be adequately represented by the existing parties.

Although the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") is a party to this proceeding, the Consumer Advocate's sole role is to represent, protect, and advance the interests of consumers of the Hawaiian Electric Companies rather than independent renewable power producers such as MLP. Furthermore, MLP believes its interests, as a private provider of renewable energy, are significantly different from the interests which the Consumer Advocate is empowered by statute to protect.

Additionally, Hawaii BioEnergy, LLC ("HBE"), a partnership in which MLP is a member and which we understand will also be requesting intervention in this proceeding, will not provide adequate protection of MLP's interests and/or rights. It is MLP's understanding that HBE's primary focus in this proceeding will be on proposed feed-in tariffs associated with biomass and biofuel derived power or renewable energy to be situated throughout the State of Hawaii. MLP, on the other hand and as discussed above, contends that its renewable energy projects will include other types of

⁹ See HAR § 6-61-55(b)(3).

¹⁰ See HAR § 6-61-55(b)(4).

technologies (i.e., wind, solar, and pumped storage) that have significantly different production output and capital cost characteristics than HBE's intended equipment such that any representation by HBE of MLP would not be sufficient and could potentially be in conflict with MLP's best interests. Furthermore, the pumped storage component or technology proposed by MLP has unique integration characteristics that could significantly benefit the electrical grid system and should have a unique, separate established feed-in tariff as an ancillary service. Therefore, MLP finds no adequate means by which its interests can be protected, other than by participating in this proceeding as an intervenor.

6. The extent to which MLP's interest will not be represented by existing parties.¹¹

None of the existing parties in this proceeding can be expected to represent the interests of MLP. HECO, MECO and HELCO's interests differ from MLP as the HECO Companies represent the interest of parties that would be purchasing renewable energy, while MLP's interests are those of a provider or developer of renewable energy. Further, as noted above, while the Consumer Advocate is a party to this proceeding, MLP has separate and distinct business and financial interests to protect that will not likely be adequately represented or addressed by the Consumer Advocate, whose role is to represent and advance the interest of all consumers, and/or other private providers or developers of renewable energy allowed to participate in this proceeding as either a party or participant.

¹¹ See HAR § 6-61-55(b)(5).

7. The extent to which MLP's participation can assist in the development of a sound record.¹²

The Order Initiating Investigation states that, "[i]ncluded in the [Energy] Agreement is a commitment by the HECO Companies to implement feed-in tariffs 'to dramatically accelerate the addition of renewable energy from new sources' and to 'encourage increased development of alternative energy projects.'"¹³ Given that accelerating the addition of renewable energy sources and encouraging alternative energy projects is among the stated objectives of the feed-in tariff, it is critical for the record in this proceeding to include the perspective and input of renewable energy providers. As a renewable energy provider, MLP maintains that it has the resources, expertise, knowledge and experience to not only assist the Commission in developing a sound record, but to also provide the Commission with the necessary data and/or information to ensure that any decision affecting the renewable energy industry in this matter is reasonable and in the public interest. Additionally, the proceedings could benefit through the involvement of a third party with an energy storage solution.

8. The extent to which MLP's participation will broaden the issues or delay the proceeding.¹⁴

MLP contends that its participation in this proceeding as an intervenor, should not broaden the issues or unduly delay the proceeding. MLP and/or its affiliates (e.g., Kapalua Water Company, Ltd.) have extensive experience participating in regulatory proceedings such as the Commission proceedings, and will be prepared to

¹² See HAR § 6-61-55(b)(6).

¹³ Order Initiating Investigation at 2.

¹⁴ See HAR § 6-61-55(b)(7).

participate in this proceeding to the degree directed by the Commission to ensure that its determination is just and expeditious.

9. The extent to which MLP's interest in the proceeding differs from that of the general public.¹⁵

MLP believes that its property, financial and other interests in this proceeding are unique and differ substantially from the interests of the general public. MLP's interests are those of an independent renewable power producer and/or developer providing power, while the interests of the general public are those of a consumer of power.

10. Whether MLP's position is in support of or in opposition to the relief sought.¹⁶

Notwithstanding the above, until MLP can adequately determine the extent to which its interests will be affected, MLP is not able to state either a position on the issues of this proceeding or its desired relief. Moreover, the Order Initiating Investigation directs the parties (including intervenors and participants, if any) in this proceeding to file "a stipulated procedural order setting forth the issues, procedures, and schedule to govern this proceeding" within 45 days of the date of said Order (i.e., by December 10, 2008).¹⁷ Thus, if the Commission allows MLP to participate as a party in this proceeding, MLP will likely be able to formulate its position on this matter subsequent to the Commission establishing the issues herein and communicating them via the issuance of either a stipulated procedural order or procedural order.

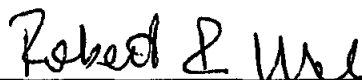
¹⁵ See HAR § 6-61-55(b)(8).

¹⁶ See HAR § 6-61-55(b)(9).

¹⁷ See Order Initiating Investigation at 8-9 (emphasis added).

Based on the foregoing, MLP contends it has satisfied all of the requirements pertaining to a motion to intervene as set forth under HAR §§ 6-61-55 and 6-61-57. Consistent with HAR § 6-61-55(d), MLP asserts that the allegations stated above are reasonably pertinent to and do not unreasonably broaden the issues already presented in this matter.¹⁸ Accordingly, MLP respectfully requests that the Commission *issue an order granting its Motion to Intervene.*¹⁹

DATED: Honolulu, Hawaii, November 13, 2008.



ROBERT I. WEBBER

Maui Land & Pineapple Company, Inc.

¹⁸ As discussed herein, MLP is seeking Commission approval for full intervenor or party status, under HAR § 6-61-55, as it believes that its interests and/or rights will be substantially impacted at least by the preliminary and informal issues raised by the Commission in its Order Initiating Investigation. However, as noted in Section 10 above, MLP will not be able to affirmatively state its position on the final issues to be addressed in this proceeding until subsequent to the issuance by the Commission of either a stipulated procedural order or procedural order, which will likely occur sometime after December 10, 2008. At that time, MLP will be able to review and analyze the final issues and may determine that its participation as a party in this proceeding could be reduced to simply monitoring the proceeding and stating a position on the issues to ensure, among other things, that its interests and/or rights are adequately protected. If MLP determines that its participation as a party to this proceeding could be reduced, it will submit the appropriate motion. As such, if MLP is allowed to participate in this proceeding, MLP respectfully requests that the Commission not limit or restrict its participation in this proceeding until after the final issues to be addressed in this proceeding are determined by the existing parties and/or intervenors and participants, if any.

¹⁹ As part of this Motion to Intervene only electronic signatures are being submitted. Original signatures will be filed separately with the Commission subsequent to the filing of the instant Motion to Intervene.

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DECLARATION OF ROBERT I. WEBBER

I, ROBERT I. WEBBER, declare as follows:

1. I am the Chief Operating Officer, Chief Financial Officer and Executive Vice President of Maui Land & Pineapple Company, Inc. ("MLP").
2. As a Hawaii corporation, MLP is qualified to do business in the State of Hawaii.
3. As a publicly traded company that owns and operates Maui Pineapple Company, Ltd., and the Kapalua Land Company, Ltd., MLP has over 25,000 acres of land holdings throughout the island of Maui, and such properties are situated in the service territory of Maui Electric Company, Ltd. MLP is currently committed to reducing Hawaii's energy costs, greenhouse gas emissions, and dependence on imported fossil fuels through the proposed development of a significant integrated renewable energy park to be situated on MLP's properties that are within MECO's service territory. MLP expects the renewable energy park to be of significant size, producing approximately 100 megawatts ("MW"), at full build-out. The nature of the renewable energy park


output will be a mix of intermittent (i.e., as-available) and firm capacity renewable power or energy. This renewable energy project is planned to consist of a mix of renewable power technologies and sizes including, without limitation, approximately 30 MW of wind turbine systems, 45 MW of photovoltaic systems, and 25 MW of pumped storage systems.

4. I am offering this Declaration in support of MLP's Motion to Intervene in the instant docket.

5. I have reviewed MLP's Motion to Intervene, and I hereby declare that the statements and/or representations made therein are true and accurate to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the State of Hawaii that the foregoing is true and correct.

Executed November 13, 2008, at Kahului, Maui, Hawaii.



ROBERT I. WEBBER

CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the foregoing Motion to Intervene on the following parties, by causing copies hereof to be mailed, postage prepaid, properly addressed, or hand delivered, to the following:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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2 Copies Hand-Delivered

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DATED: Honolulu, Hawaii, November 13, 2008.



ROBERT I. WEBBER
Maui Land & Pineapple Company, Inc.